

AMENDED IN SENATE AUGUST 17, 2009

AMENDED IN SENATE JULY 13, 2009

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AMENDED IN ASSEMBLY APRIL 28, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 900

Introduced by Assembly Member De Leon
(Coauthors: Assembly Members Emmerson, Fuller, Gilmore, Salas,
and Solorio)

February 26, 2009

An act to amend Sections 5100, 5101, 5103, and 5107 of, to add Chapter 2.7 (commencing with Section 348) to Division 1 of, and to repeal Section 5108 of, of the Water Code, relating to water diversion.

LEGISLATIVE COUNSEL'S DIGEST

AB 900, as amended, De Leon. Water diversion and use: reporting.

Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the State Water Resources Control Board a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions. Under existing law, the monthly record requirement does not apply to a surface water diversion with a combined diversion capacity from a natural channel that is less than 50 cubic feet per second or to diverters using siphons in the tidal zone. Existing law subjects a person who makes a material misstatement in connection with the filing of the

diversion and use statements to administratively imposed civil penalties in the amount of \$500 for each violation.

This bill would revise the types of water diversions for which the reporting requirement does not apply, including, among other diversions, a diversion that occurs before January 1, 2009, if certain requirements are met. The bill would ~~revise those specified~~ *delete* exceptions ~~that apply~~ to the monthly record requirement, and *revise* requirements relating to the contents of the statement of diversions and use.

The bill would subject a person to civil liability if that person fails to file, as required, a diversion and use statement for a diversion or use that occurs after January 1, 2009, tampers with any measuring device, or makes a material misstatement in connection with the filing of a diversion and use statement. The board would be authorized to impose the civil liability in accordance with a specified schedule.

The bill would authorize the board and the Department of Water Resources to adopt emergency regulations for the filing of reports of water diversion or use that are required to be filed by those respective state agencies under specified statutory provisions.

The bill would make additional conforming changes and would set forth related legislative findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The San Francisco Bay-Sacramento-San Joaquin River Delta
- 4 (Delta) is in the midst of an ecological crisis. Its unique character
- 5 and capacity to serve California are threatened by a variety of
- 6 factors, including diversions of water, pollution, urbanization,
- 7 flood and seismic risks, and invasive species.
- 8 (b) The water that is found in, and delivered through, the Delta
- 9 is the source of drinking water for 25,000,000 Californians, fuels
- 10 a \$37,000,000,000 agricultural industry, and serves as an important
- 11 habitat for over 750 plant and animal species.
- 12 (c) It has been estimated that there are approximately 1,800
- 13 agricultural, municipal, and industrial diversions in the Delta that,
- 14 combined, divert 5 percent of the freshwater flows from the Delta
- 15 watershed. However, because none of these in-Delta diverters are

1 required to measure and report their water diversion and use, there
2 is presently little data regarding the nature, extent, and location of
3 these diversions.

4 (d) Given the well-known importance of water to the state's
5 health, economy, and welfare, including to its ecosystems and
6 natural resources, water measurement and reporting are required
7 for most diversions.

8 (e) The Delta Vision Committee Implementation Report
9 recommends improved monitoring and reporting, including the
10 elimination of exemptions from requirements for the filing of
11 statements of water diversion and use.

12 SEC. 2. Chapter 2.7 (commencing with Section 348) is added
13 to Division 1 of the Water Code, to read:

14
15 CHAPTER 2.7. WATER DIVERSION AND USE REPORTS
16

17 348. (a) The department or the board may adopt emergency
18 regulations providing for the electronic filing of reports of water
19 diversion or use required to be filed with the department or board
20 under this code, including, but not limited to, any report required
21 to be filed under Part 5.1 (commencing with Section 5100) of
22 Division 2 and any report required to be filed by a water right
23 permittee or licensee.

24 (b) Emergency regulations adopted pursuant to this section, or
25 any amendments thereto, shall be adopted by the department or
26 the board in accordance with Chapter 3.5 (commencing with
27 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
28 Code. The adoption of these regulations is an emergency and shall
29 be considered by the Office of Administrative Law as necessary
30 for the immediate preservation of the public peace, health, safety,
31 and general welfare. Notwithstanding Chapter 3.5 (commencing
32 with Section 11340) of Part 1 of Division 3 of Title 2 of the
33 Government Code, any emergency regulations or amendments to
34 those regulations adopted under this section shall remain in effect
35 until revised by the department or the board that adopted the
36 regulations or amendments.

37 SEC. 3. Section 5100 of the Water Code is amended to read:

38 5100. As used in this part:

1 (a) “Best available technologies” means technologies at the
2 highest technically practical level, using flow totaling devices, and
3 if necessary, data loggers and telemetry.

4 (b) “Best professional practices” means practices attaining and
5 maintaining the accuracy of measurement and reporting devices
6 and methods.

7 (c) “Diversion” means taking water by gravity or pumping from
8 a surface stream or subterranean stream flowing through a known
9 and definite channel, or other body of surface water, into a canal,
10 pipeline, or other conduit, and includes impoundment of water in
11 a reservoir.

12 (d) “Person” means all persons whether natural or artificial,
13 including the United States of America, State of California, and
14 all political subdivisions, districts, municipalities, and public
15 agencies.

16 SEC. 4. Section 5101 of the Water Code is amended to read:

17 5101. Each person who, after December 31, 1965, diverts water
18 shall file with the board, prior to July 1 of the succeeding year, a
19 statement of his or her diversion and use, except that a statement
20 is not required to be filed if the diversion is any of the following:

21 (a) From a spring that does not flow off the property on which
22 it is located and from which the person’s aggregate diversions do
23 not exceed 25 acre-feet in any year.

24 (b) Covered by a registration for small domestic or livestock
25 stockpond uses, or permit or license to appropriate water on file
26 with the board.

27 (c) Included in a notice filed pursuant to Part 5 (commencing
28 with Section 4999).

29 (d) Regulated by a watermaster appointed by the department
30 and included in annual reports filed with a court or the board by
31 the watermaster, which reports identify the persons who have
32 diverted water and describe the general purposes and the place,
33 the use, and the quantity of water that has been diverted from each
34 source.:

35 ~~(e) A surface water diversion that has a combined diversion~~
36 ~~capacity of less than _____.~~

37 ~~(f)~~

38 (e) Included in annual reports filed with a court or the board by
39 a watermaster appointed by a court or pursuant to statute to
40 administer a final judgment determining rights to water, which

1 reports identify the persons who have diverted water and give the
2 general place of use and the quantity of water that has been diverted
3 from each source.

4 ~~(g)~~

5 (f) For use in compliance with Article 2.5 (commencing with
6 Section 1226) or Article 2.7 (commencing with Section 1228) of
7 Chapter 1 of Part 2.

8 ~~(h)~~

9 (g) A diversion that occurs before January 1, 2009, if any of the
10 following applies:

11 (1) The diversion is from a spring that does not flow off the
12 property on which it is located, and the person's aggregate
13 diversions exceed 25 acre-feet in any year.

14 (2) The diversion is covered by an application to appropriate
15 water on file with the board.

16 (3) The diversion is reported by the department in its hydrologic
17 data bulletins.

18 (4) The diversion is included in the consumptive use data for
19 the Delta lowlands published by the department in its hydrologic
20 data bulletins.

21 SEC. 5. Section 5103 of the Water Code is amended to read:

22 5103. Each statement shall be prepared on a form provided by
23 the board. The statement shall include all of the following
24 information:

25 (a) The name and address of the person who diverted water and
26 of the person filing the statement.

27 (b) The name of the stream or other source from which water
28 was diverted, and the name of the next major stream or other body
29 of water to which the source is tributary.

30 (c) The place of diversion. The location of the diversion works
31 shall be depicted on a specific United States Geological Survey
32 topographic map, or shall be identified using the California
33 Coordinate System, or latitude and longitude measurements. If
34 assigned, the public land description to the nearest 40-acre
35 subdivision and the assessor's parcel number shall also be provided.

36 (d) The capacity of the diversion works and of the storage
37 reservoir, if any, and the months in which water was used during
38 the preceding calendar year.

39 (e) (1) On and after January 1, 2012, monthly records of water
40 diversions. The measurements of the diversion shall be made using

1 best available technologies and best professional practices. Nothing
2 in this paragraph shall be construed to require the implementation
3 of technologies or practices by a person who provides to the board
4 documentation demonstrating that the implementation of those
5 practices is not locally cost effective.

6 ~~(2) Paragraph (1) does not apply to a surface water diversion~~
7 ~~that has a combined diversion capacity from a natural channel that~~
8 ~~is less than ____.~~

9 ~~(3)~~

10 (2) (A) The terms of, and eligibility for, any grant or loan
11 awarded or administered by the department, the board, or the
12 California Bay-Delta Authority on behalf of a person that is subject
13 to paragraph (1) shall be conditioned on compliance with that
14 paragraph.

15 (B) Notwithstanding subparagraph (A), the board may determine
16 that a person is eligible for a grant or loan even though the person
17 is not complying with paragraph (1), if both of the following apply:

18 (i) The board determines that the grant or loan will assist the
19 grantee or loan recipient in complying with paragraph (1).

20 (ii) The person has submitted to the board a one-year schedule
21 for complying with paragraph (1).

22 (C) It is the intent of the Legislature that the requirements of
23 this subdivision shall complement and not affect the scope of
24 authority granted to the board by provisions of law other than this
25 article.

26 ~~(f) For persons not subject to paragraph (1) of subdivision (e),~~
27 ~~a description of the acreage of each crop irrigated, the average~~
28 ~~number of people served with water, the average number of stock~~
29 ~~watered, and the nature and extent of any other use during the~~
30 ~~preceding calendar year, or other equivalent information that~~
31 ~~indicates the quantity of water used as may be prescribed by the~~
32 ~~board. Those who maintain water measuring devices and keep~~
33 ~~monthly records of water diversions shall state the quantity of~~
34 ~~water diverted by months during the preceding calendar year.~~

35 ~~(g)~~

36 (f) The purpose of use.

37 ~~(h)~~

38 (g) A general description of the area in which the water was
39 used. The location of the place of use shall be depicted on a specific
40 United States Geological Survey topographic map and on any other

1 maps with identifiable landmarks. If assigned, the public land
2 description to the nearest 40-acre subdivision and the assessor's
3 parcel number shall also be provided.

4 (i)

5 (h) The year in which the diversion was commenced as near as
6 is known.

7 SEC. 6. Section 5107 of the Water Code is amended to read:

8 5107. (a) The making of any willful misstatement pursuant to
9 this part is a misdemeanor punishable by a fine not exceeding one
10 thousand dollars (\$1,000) or by imprisonment in the county jail
11 for not to exceed six months, or both.

12 (b) Any person who fails to file a statement required to be filed
13 under this part for a diversion or use that occurs after January 1,
14 2009, who tampers with any measuring device, or who makes a
15 material misstatement pursuant to this part may be liable civilly
16 as provided in subdivisions (c) and (d).

17 (c) Civil liability may be administratively imposed by the board
18 pursuant to Section 1055 in an amount not to exceed the following
19 amounts:

20 (1) For failure to file a statement, one thousand dollars (\$1,000),
21 plus five hundred dollars (\$500) per day for each additional day
22 ~~of violation~~ *on which the violation continues* if the person fails to
23 file a statement within 30 days after the board has called the
24 violation to the attention of that person.

25 (2) For a violation resulting from a physical malfunction of a
26 measuring device not caused by the person or any other
27 unintentional misstatement, two hundred fifty dollars (\$250), plus
28 two hundred fifty dollars (\$250) per day for each additional day
29 on which the measuring device continues to malfunction or the
30 misstatement is not corrected if the person fails to correct or repair
31 the measuring device or correct the misstatement within 60 days
32 after the board has called the malfunction or violation to the
33 attention of that person.

34 (3) For knowingly tampering with any measuring device or
35 knowingly making a material misstatement in a statement filed
36 under this part, twenty-five thousand dollars (\$25,000), plus one
37 thousand dollars (\$1,000) for each day ~~in~~ *on* which the violation
38 continues if the person fails to correct the violation within 30 days
39 after the board has called the violation to the attention of that
40 person.

1 (4) For any other violation, five hundred dollars (\$500), plus
2 two hundred fifty dollars (\$250) for each additional day of violation
3 *on which the violation continues* if the person fails to correct the
4 violation within 30 days after the board has called the violation to
5 the attention of that person.

6 (d) When an additional penalty may be imposed under
7 subdivision (c) for failure to correct a violation or correct or repair
8 a malfunctioning measuring device within a specified period after
9 the violation has been called to a person's attention by the board,
10 the board, for good cause, may provide for a longer period for
11 correction of the problem, and the additional penalty shall not
12 apply if the violation is corrected within the period specified by
13 the board.

14 (e) In determining the appropriate amount, the board shall
15 consider all relevant circumstances, including, but not limited to,
16 all of the following factors:

17 (1) The extent of harm caused by the violation.

18 (2) The nature and persistence of the violation.

19 (3) The length of time over which the violation occurs.

20 (4) Any corrective action undertaken by the violator.

21 (f) All funds recovered pursuant to this section shall be deposited
22 in the Water Rights Fund established pursuant to Section 1550.

23 (g) Remedies under this section are in addition to, and do not
24 supersede or limit, any other remedies, civil or criminal.

25 SEC. 7. Section 5108 of the Water Code is repealed.